

PUBLIC HEARING AND REGULAR MEETING

**City of Hampton Wetlands Board
City Council Chambers, 8th floor, City Hall
October 28, 2003**

PRESENT: Chairman William M. Snider, II, Vice-Chairman William L. Wood, and Board Members Lillian Bellamy, Gayle Cozzens, and Thomas W. Morris.

ITEM I. CALL TO ORDER

and

ITEM II. ROLL CALL.

Chairman Snider called the meeting to order at 5:00 p.m. and introduced each of the Board Members. Staff persons in attendance were Staff Coordinator Brian Ballard, Greg Goetz, and Sharon McSmith of the City of Hampton Planning Department, and Traycie West of the Virginia Marine Resources Commission (VMRC).

Chairman Snider explained to the public the purpose and jurisdiction of the Wetlands Board, the procedure of the meeting, and the process to appeal the Board's decisions.

ITEM III. CONSIDERATION OF MINUTES.

There being no additions or corrections, a motion was made by Vice-Chairman Wood and seconded by Board Member Morris to approve the minutes of the July 22, 2003 Wetlands Board meeting. A voice vote on the motion resulted as follows:

AYES:	Bellamy, Cozzens, Morris, Wood, Snider
NAYS:	None
ABST:	None
ABSENT:	None

ITEM IV. JOINT APPLICATIONS (PUBLIC HEARING ITEMS).

Chairman Snider read the public hearing notice on the next agenda item.

Application No. 03-1868 by Paul Seck to construct a 286'± linear riprap revetment on the shoreline at 1010 Beach Road off of Long Creek, a tributary of the Back River and Chesapeake Bay.

Mr. Brian Ballard, City Planner, presented the staff report on the subject application, a copy of which is attached hereto and made a part hereof. Staff stated that the applicant has agreed to reduce the length of the riprap to 240 feet. Staff recommended approving the application subject to the four conditions in the package, as well as a fifth condition for standard maintenance.

In response to a statement by Chairman Snider, Mr. Ballard replied in the affirmative, that Dr. Seck had agreed to modify the application to 240' based on a recommendation by staff.

In response to a question by Vice-Chairman Wood concerning the length of the riprap, Mr. Ballard showed drawings to the Board as to where the riprap would begin and end. Chairman Snider stated the property line does not go all the way to the road and therefore the length is deceiving.

Vice-Chairman Wood stated that when the Board is faced with an application such as this wherein there is extremely limited wave action, we usually recommend a slope of 1.5:1 and not 2:1. In this case it would equate to approximately 120 feet of wetlands savings.

Mr. Ballard stated 1.5:1 would be appropriate since it is a low energy system.

In response to a question by Vice-Chairman Wood, the applicant, Paul Seck, replied from the audience that there were no toe stops placed waterward, only on land.

In response to a question by Chairman Snider, Mr. Ballard stated the width of the riprap will be 5.25' drawn at a 1.5:1 slope.

In response to a question by Chairman Snider, Mr. Seck replied that he was thinking the riprap would not be any higher than the existing bank.

Chairman Snider suggested we change condition number two to reflect a 1.5:1 slope and that the revetment not extend channelward of the bank more than 5.25 feet.

There being no additional speakers or discussion, a motion was made by Vice-Chairman Wood and seconded by Board Member Morris to approve Application No. 03-1868 subject to the following five conditions:

1. The approved-staked alignment of the proposed riprap revetment shall remain in place until installation of the revetment.
2. The slope of the riprap revetment shall be no more than 1.5:1 and shall not extend channel ward of the bank more than 5.25 feet.
3. The core stone and armor stone shall be no more than 30 pounds and 100 pounds, respectively, and placed on filter cloth.

4. Should construction result in any disturbance to the existing Chesapeake Bay Resource Protection buffer, the buffer shall be returned to a condition substantially similar to its pre-permit condition.
5. Maintenance of this structure shall not exceed the limits of this permit and shall be limited to materials stipulated in this permit unless otherwise approved by the Staff Coordinator. The Wetlands Board shall be notified prior to any maintenance activity.

A roll call vote on the motion resulted as follows:

AYES:	Bellamy, Cozzens, Morris, Wood, Snider
NAYS:	None
ABST:	None
ABSENT:	None

ITEM IV. JOINT APPLICATIONS (Continued).

Chairman Snider read the public hearing notices on the next agenda items.

Application No. 03-2027 by Waterview Properties, LLC, to construct a 60'+ linear riprap revetment on the shoreline at 105 Grandview Drive off the shore of the Chesapeake Bay.

Application No. 03-2028 by Robin B. McArther to construct a 60'+ linear riprap revetment on the shoreline at 107 Grandview Drive off the shore of the Chesapeake Bay.

Mr. Ballard presented the staff report on both applications, copies of which are attached hereto and made a part hereof. He stated that staff recommended approval of both applications, subject to the three conditions contained in the staff report, along with a fourth condition for standard maintenance.

In response to questions by Vice-Chairman Wood concerning the weight of the stone shown on the picture, Mr. Jeff Watkins of Riverworks, agent for the contractor, stated that the stone is approximately 40 pounds, and they propose 50 pound core stone which is the size of the stone on the north side of the properties. He stated that Hurricane Isabel dumped additional stone on the properties shown in the pictures and pushed it up higher than the seawall which helped get the properties through the storm.

In response to a question by Vice-Chairman Wood concerning the size of the stone, Mr. Watkins stated it will be the same size as the riprap to the south of the properties.

In response to a question by Chairman Snider concerning the stone being placed seaward of the concrete wall, Mr. Watkins replied in the affirmative, stating the stone will be flush with the wall.

In response to Chairman Snider's request that if a separate permit is needed from the Chesapeake Bay Review Committee for any additional work they propose, that they not dump anything on top of the seawall without a permit from the Wetlands Board, Mr. Allan Tanner stated the placed stone is very effective and there may need to be some height based on our experience with Isabel.

There being no additional speakers or discussion, a motion was made by Board Member Morris and seconded by Board Member Cozzens to approve Application Nos. 03-2027 and 03-2028 subject to the following four conditions:

1. The slope of the riprap revetment shall be no more than 2:1 and shall not extend channel ward of the toe represented in the application.
2. The core stone and armor stone shall be no more than 50 pounds and 1500+ pounds, respectively, and placed on filter cloth.
3. Should construction result in any disturbance to the existing Chesapeake Bay Resource Protection buffer, the buffer shall be returned to a condition substantially similar to its pre-permit condition.
4. Maintenance of this structure shall not exceed the limits of this permit and shall be limited to materials stipulated in this permit, unless otherwise approved by the Staff Coordinator. The Wetlands Board shall be notified prior to any maintenance activity.

ITEM V. STAFF REPORT.

Extension Request, 98-1205

Chairman Snider stated that extensions can only be granted within one year after an application is approved and for only one year; therefore, there is no provision to extend the subject application.

A motion was made by Vice-Chairman Wood and seconded by Board Member Morris to deny the extension request for Application No. 98-1205. A roll call vote on the motion resulted as follows:

AYES:	Bellamy, Cozzens, Morris, Wood, Snider
NAYS:	None
ABST:	None
ABSENT:	None

Violation

Mr. Ballard stated he received a complaint concerning 1319 Andrews Boulevard and showed a picture of the violation to the Board. He stated that he spoke to the homeowners, the Morgans, who asked staff to help determine the wetlands boundary. He made a site visit on 9-24-03 and noted that the existing fence line is 5' behind the wetlands boundary, so still upland; they needed help determining the wetlands boundary in order to reestablish their fence line as far back as they could. Mr. Ballard sent them a letter stating those facts on 9-26-03. Early in October he received complaints about wetlands being filled in and he made another site visit; the photos show tremendous amounts of dirt (10-12 truckloads) dumped on the property, going up to 17' beyond the fence line which is 12' into wetlands. He sent a violation letter to the homeowner on October 10, 2003, calling for immediate removal of the dirt, that a silt fence needed to be installed, for them to notify our permit office to see if any additional permit is necessary, and if no additional permit was required that they spread, seed, and establish a silt fence, and that the slope of the bank at the wetlands boundary be 3:1 unless a retaining wall is placed there to allow for a stable slope. He has since visited the site again and the dirt has been spread out but none removed; they are still in violation, being up to 12' beyond the wetlands boundary. He recommended that the Board ask the homeowner to come before the Board at the November meeting for a show-cause and proceed from there.

In response to a question by Board Member Cozzens concerning the silt fence, Mr. Ballard stated there is a rolled up, unused silt fence on site.

Chairman Snider stated it is not proper fill—it has coal, asphalt, and concrete in it, probably from an old road bed.

In response to questions by Chairman Snider, Mr. Ballard stated he made Codes Compliance aware of the violation and the homeowners that they need to contact our Permit Office concerning a permit for the fill material. As far as he has determined, the homeowners have not gone to the Permit Office. His letter to them was basically a stop work order.

Chairman Snider stated there are multiple violations on this property, that of the Wetlands Board, the Chesapeake Bay Review Committee, and the Erosion and Sediment Control permit, although the Wetlands Board can only deal with what has been dumped into the wetlands. His feeling is that the homeowners should be given a show cause letter to present themselves at the November Board meeting to explain why they did what they did and to explain what they propose to correct the situation.

In response to a question by Chairman Snider, Mr. Ballard stated that Codes Compliance has attempted to contact the homeowner.

In response to a question by Board Member Morris concerning which is the "higher violation" in the pecking order of violations mentioned by Chairman Snider, Mr. Ballard

stated that philosophically he believes the Wetlands Board is the higher violation because of the dumping of dirt into wetlands.

Vice-Chairman Wood stated he believes we are talking about two properties because the dirt is also on the property next door. He questioned, since we knew it was a violation the day the first phone call was made, why wasn't a stop work order issued and when the second phone call complaint was made that they were pushing dirt down, why weren't they stopped then?

Mr. Ballard stated he has no control over what a homeowner does. After receiving the phone call he made a site visit, sent the homeowners a letter, and they came into the office the next day to talk about how to get the fill out.

Chairman Snider stated this is a frustrating position to be in, and that he will ask additional questions at tomorrow's Chesapeake Bay Review Committee meeting. The homeowners do not think the City will take any action against them; they willfully did something they were not supposed to do, and they did it with the knowledge that they were doing something they were not supposed to do. They were notified a second time and they still went ahead and did what they were not supposed to do, which is arrogant.

Mr. Ballard stated his first letter went out on September 26; anything done beyond this point was done while being aware of the penalties. He recommended asking the homeowner to appear at next month's Board meeting.

Chairman Snider stated we need to limit the discussion to what the Wetlands Board is concerned with, and a show cause letter is the minimal thing to do at this point.

A motion was made by Board Member Cozzens and seconded by Vice-Chairman Wood to send a Show Cause letter to the two affected property owners requesting they appear before the Wetlands Board at the November 2003 public meeting.

In response to a question by Board Member Morris concerning the second property owners/neighbor being aware of the violation, Mr. Ballard stated he has not discussed the violation with anyone but the owners at 1319 Andrews Boulevard.

In response to a statement by Board Member Morris that there may be a problem asking the neighbors to show cause, Chairman Snider stated the dirt is in both yards. He suggested Mr. Ballard also send a violation letter to the other address and make it a show cause letter at the same time.

Board Member Cozzens noted that the first homeowners' daughter stated they intended to go halfway out, much farther than they did, and that the neighbors were wanting to extend their yard out also.

Board Member Morris stated they were aware of the violation they just have not gone through the process that 1319 Andrews has thus far.

Board Member Cozzens and Vice-Chairman Wood agreed to the amended motion, that both homeowners be sent a Show Cause letter requesting they appear before the Wetlands Board at the November 2003 public meeting, with the second homeowners' letter first notifying them of the specific violation.

A roll call vote on the motion resulted as follows:

AYES:	Bellamy, Cozzens, Morris, Wood, Snider
NAYS:	None
ABST:	None
ABSENT:	None

ITEM VI. MATTERS BY THE BOARD MEMBERS.

Vice-Chairman Wood stated there is a property on Curle Road that can be seen from Mercury Boulevard whose owner has been cleaning up the waterfront. He phoned in the violation and received a return call that trees had blown over during Hurricane Isabel, however, he knows they were taking down any tree that was in the view of the home. He doesn't deny there were trees down from Isabel, and some of them may have been in the wetlands--they have done a good job of cleaning them up, but all of the trees taken down were not blown down, they were obviously taken down to make a better view for the home.

In response to questions by Vice-Chairman Wood, Mr. Goetz stated we received a call concerning this property and advised the caller to report it through 311 which would direct them to Codes Compliance since it is within their purview. An inspector went to the site by the next day, who verified that it was all storm damage and no trees were removed from the property without having been damaged or threatening to do damage. The inspector made a determination that there were no violations of the Chesapeake Bay regulations or any other City code dealing with that type of activity. The inspector stated there were no wetlands violations as a result of the clean-up, that they had taken great care and were a good example of how to do a clean-up.

Vice-Chairman Wood stated they are doing a good job and they are still cleaning up, but he does not believe it was all storm damage.

Mr. Goetz stated the homeowner expressed that the property had recently been sold and the clean-up is a joint venture between the purchaser and the seller.

In response to a question by Chairman Snider concerning the property at low tide, Vice-Chairman Wood stated the trees were on the property's edge, and not all of the trees were lying down or sideways.

In response to Chairman Snider's statement that we normally cite people taking out trees within the 50' buffer, Mr. Goetz stated that if, in the opinion of the person doing the inspection, they find that what has happened is good horticultural practice, such as removing diseased or dying plant material, then we would most likely not cite them, though it is a fuzzy line between the two.

Chairman Snider requested that Mr. Goetz visit the site during low tide and report his findings and opinion to the Board as to what happened, especially within the inter-tidal zone and whether vegetation was removed.

In response to Mr. Goetz's statement that he wouldn't expect to find trees growing in the intertidal zone, Chairman Snider stated there were some at the waters edge. He asked that Mr. Goetz report his findings to the Board either by letter or by reporting at next month's meeting.

There were no additional matters presented by the Board.

ITEM VII. MATTERS BY THE PUBLIC.

Mr. Gene Cone, 1341 Coral Place, stated that during Hurricane Isabel a 70' pine tree fell two lots down from his property into the tributary that runs behind his which is City property, Capt. Smith Elementary School. He stated the downed tree can be seen from his property, and invited those interested to look at it from his yard, stating that the tree should be taken out as soon as possible. The tree had been leaning for years and now it is in the tributary.

In response to questions by Chairman Snider, Mr. Cone stated the tree crosses almost to the other side of the tributary which is wetlands owned by either the City or the Schools. The tributary is filling in with silt and one would be lucky to get a canoe into the area.

Chairman Snider asked Mr. Ballard to look into the situation and report back to the Board.

In response to a question by Mr. Steve Worth, of 1363 Coral Place, concerning guidance when a tree on private property falls to other property, Chairman Snider stated that, although he is not a lawyer, if the tree is on a neighbor's property he believes it is then the neighbor's responsibility. If the property owners own to the center of the tributary, that would apply the same to the owner of the other side of the tributary. If you have a tree that fell from your property into the creek, you should call Ted Henifin, Director of Public Works, and explain what has happened. The City has removed a lot of trees since Isabel and if it is impeding flow it may very well be the City's responsibility.

ITEM VIII. ADJOURNMENT.

There being no additional business, the meeting was adjourned at 5:53 p.m.

Respectfully submitted,

Brian Ballard, City Planner
Secretary to the Board

APPROVED BY:

William M. Snider, II, Chairman
Hampton Wetlands Board